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SECDEF FOR OSD/ISP
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COMMERCE FOR BIS (GOLDMAN)
NSC FOR JOECK
WINPAC FOR LIEPMAN

E.O. 12958: N/A

TAGS: [PARM](#) [PREL](#) [EIND](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC) - WRAP-UP FOR
JUNE 14-18 INDUSTRY CONSULTATIONS

SUMMARY

1. (U) The following are the results of the June 14-17 facilitations on industry issues. Schedule 1 captive use remains under consideration due to differences in opinion over whether or not a decision clarifying the declarability of Schedule 1 'captive use' production is necessary. On one hand, since there is no evidence that such production exists, a decision seems ceremonial. On the other hand, even if there exists no such production, the knowledge and technology to produce such chemicals in captive use situations is widely available, particularly in the case of pharmaceutical manufacturing (e.g., pethidine). Discussions on low concentrations for Amiton, PFIB and BZ whittled down the proposed decision text to two open items: specific concentration percentages and whether States Parties should apply one percentage to all three chemicals or disparate percentages for each.

2. (U) With regard to Schedule 2 Facility Agreements, proposed EC-37 report language encouraging the Technical Secretariat to adopt more flexible criteria in determining

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not to conclude such agreements appears to have consensus. The discussions also produced agreed EC-37 report language for marking of Schedule 1 chemicals in the Handbook on Chemicals to indicate chemicals which have been declared in amounts greater than 100 grams by States Parties to the TS since entry into force. Discussions on other chemical production facilities (OCPF) site selection made progress in terms of a path forward for discussions, but made little progress on minimizing substantive differences regarding accommodation of State Parties' proposals or enhance transparency and/or accountability in the allocation of TS nomination points. End Summary.

Captive Use

3. (U) The facilitator (Rudduck, UK) held Schedule 1 Captive Use consultations on June 15. The discussions remain deadlocked between two schools of thought on the need for a clarification of Schedule 1 captive use. One school holds that Art. II definitions must remain consistent and that clarifying 'captive use' as declarable for Schedule 1 makes legal/common sense, given the availability of knowledge and technology regarding past captive use Schedule 1 production. Germany is a staunch advocate of this position and the UK, France and U.S. also tend to fall into this category. The second school says that since there is no known production, despite the fact that several old patents exist, there is no reason to 'regulate for the sake of regulation.' Canada, Russian Federation, India, and China fall into this category.

4. (U) During discussions, the facilitator reviewed the fact that there is evidence 'pethidine' is being produced (comes from the licensing activity required under the "1961 Single Convention on Narcotic Drugs and the 1972 Additional Protocol to that Convention"). Pethidine is one of the examples offered by Germany as having a historical process, publicly available via several EU and U.S. patents, that uses nitrogen mustard as an intermediate in a captive use situation. Specifically, the facilitator indicated that as of 2000, Brazil, Germany, India, Japan, Netherlands, Spain, UK, U.S. and Australia all license and produce pethidine, as reported to the UN, although UK experts admit that it is not known which process is used in each country (whether the conversion is made straight from the nitrogen mustard (NM) salt or by 'captively producing' the NM base).

5. (U) UK experts informed Del that their companies do not use the NM route, and suspected the U.S. producers use the same process. Del understands that pre-1995, many western

companies, including U.S. producers, changed pathways to manufacture such pharmaceuticals to avoid being captured by the Schedule 1 obligations surfacing in the CW Convention Preparatory Commission. On the technical side, Germany indicated the only difference between the two routes is the pH levels in the process. UK experts provided the following info to Del regarding US licensed and declared producers of pethidine:

Johnson Matthey, Inc., West Deptford, NJ
Mallinckrodt Chemical, St. Louis, MO
Organichem Corp, Rensselaer, NY

16. (U) ACTION REQUEST: Del requests any available information on the processes used and concerns with production of Schedule 1 chemicals, particularly if this information runs counter to what Del understands to be the case that no Schedule 1 production is ongoing in the U.S. as described above and that any company that did produce using previous pathways subsequently changed those routes in anticipation of CWC implementation. The concern is that clarifying that 'captive' production of Schedule 1 chemicals in this manner may push SP (if they have not considered S1 captive use to be declared) over the aggregate one tonne limit in these instances.

Schedule 2A/2A* - Low Concentrations

17. (U) For discussions on June 15, the facilitator requested the discussions be approached as a dual-track exercise. Given that significant disagreement remains over the exact percentages to be applied to the three chemicals (Amiton, PFIB and BZ), the facilitator requested delegates to focus on editing changes to the provided draft decision text. Working from the text distributed in May 2004, the facilitator hoped this would help eliminate the underbrush of the discussions, leaving the only issue the precise concentration limits to be applied.

18. (U) Regarding preambular text changes, the facilitator agreed to eliminate paragraph 3 due to redundancy with paragraph 5, in accordance with requests from both the Russian and UK delegations. Del requested inserting a preambular paragraph referencing C-7/Dec. 8 in exchange for eliminating redundancy in operative paragraphs 14 and 18. Specifically, paragraph 4 of C-7/Dec.8 already codifies that indirect measurements or calculations are acceptable basis for declaration. The facilitator agreed to make this change. Of note, this reference also clarifies the applicability of the boundaries of production text in that both quantity and concentrations must be exceeded, simultaneously, during production. The language in paragraphs 13 and 17 are therefore, also clarified by the preambular reference to C-7/Dec.8 in that the proposed decision text could be read to suggest that quantities and concentrations could considered independent for purposes of declaration. Preambular paragraphs 7 and 8 were also merged, at the request of the UK.

19. (U) Apart from eliminating paragraphs 14 and 18, few changes were made to the operative paragraphs. The Italian delegation requested that a note be included in the document citing that no agreement has yet been reached on the usage of one percentage for all three chemicals or whether there would be disparate percentages applied. The Italians favor a single percentage approach and are concerned the structure of the document pre-judges that disparate percentages are appropriate. While no delegation agreed this issue has been resolved, this debate spilled into a general debate on recommended percentages, despite the facilitator's best efforts to maintain focus on editing changes only.

110. (U) Regarding specific positions on concentrations, the Italians favor a .5% concentration for all three chemicals. Norway indicated they could support a concentration as low as .5%. The UK indicated they could go as low as .5% and is willing to change their regulations accordingly. Germany indicated that they have not been provided with sufficient information in terms of proliferation risk to justify changing their regulations below 30%. The Germans also offered that, following demonstration of any applicable proliferation risk, any consideration of low concentrations should be based on a decision of whom to capture in regards to the risk posed. Specifically, as presented by the UK during the last round of consultations, the Germans noted that TFE has a production concentration of PFIB as roughly .01% and HFP has a production concentration of roughly 3-4%.

111. (U) Germany argued that .01% is clearly not on the table for consideration because of the "extremely low concentration" and that .5% appears overkill to capture HFP PFIB production, where production occurs at a higher concentration. Germany also noted that other process formulations for TFE and HFP production yield significantly higher concentrations of PFIB during normal operations. For these reasons, Germany argues that the discussion should be

what percentage, if a proliferation risk for PFIB is identified, should be set which is well above the .5% level currently being discussed.

¶12. (U) On the subject of concentrations, Del reiterated the United States regulatory concentration level remains at 30% and that we would need to see compelling arguments for the nonproliferation benefits of a threshold below that contained in U.S. regulations before agreeing to a lower mixture rule. Del noted that, in this regard, the UK PFIB proliferation risk paper is still under consideration.

¶13. (U) Closing the discussion on the paper, the UK facilitator agreed, upon request of the UK, Italy and India, to strike paragraph 20 from the proposed decision document. The facilitator indicated he intends to issue a revised text reflecting the editorial changes offered by SP, leaving only the issue of specific concentrations in brackets and leaving open the question of whether or not to have one percentage or separate percentages for the three chemicals.

¶14. (U) As regards to the BZ questions contained in the guidance cable, Del delivered the questions to the Italian delegation. The Italians indicated they would work on a response to the questions with the Italian experts who wrote the Italian BZ paper.

Schedule 2 Facility Agreements

¶15. (U) Discussions on June 16 centered upon the facilitators' (Heinzer, Switzerland and Abe, Japan) proposed EC-37 report language, circulated May 26, encouraging the TS to establish criteria to reduce the number of Schedule 2 Facility Agreements. The paper is broken out into three paragraphs, the first identifies the treaty origin of the facility agreement requirement from Verification Annex, Part VII, paragraphs 17 and 24, noting the common element between the two that facility agreements are to be concluded unless agreed between the inspected SP and the TS that one is not needed. The second paragraph articulates the recommendation that the TS consider carefully the need for each Schedule 2 facility agreement based on the information available through its verification activities (declaration and inspection) and also taking into account the opinion of the inspected SP involved. The third paragraph notes the Council's recognition that enactment of such criteria by the TS may lead to a noticeable reduction in the number of facility agreements.

¶16. (U) During the last EC, similar language posed by the facilitators failed to gain consensus due to two delegations: Iran and India. At the onset of these consultations, the Iranians, backed by India and Pakistan, indicated they could support the language as written, provided that the third paragraph was dropped. As it posed no substantive requirements or instructions to the TS, States Parties, including Austria, UK, Switzerland, France, China, Russia, and Japan agreed to drop the third paragraph. Del and Denmark both noted we could show flexibility on dropping the third paragraph, but noted that our flexibility was contingent upon acceptance of paragraphs 1 and 2 remaining intact. This was agreed. However, before the meeting could be closed, the Indian delegation - predictably - offered some "additional editorial" changes to paragraphs 1 and 2.

¶17. (U) In the first paragraph, the Indian delegation requested that the references to "unless the inspected State Party and the Technical Secretariat agree it (facility agreement) is not needed" be struck from the document as they appear to be quoted only from paragraph 17 and do not include all elements of paragraph 24. They suggested this introduced a hierarchy of paragraphs in the Convention. Del noted that the language is the only common element appearing in both paragraphs, is not a direct quote and is germane to the issue being presented for adoption by the Council - namely how the TS develops criteria it will use to reach agreement that a

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facility agreement is unnecessary. France echoed a similar concern with regards to the treaty reference and the facilitator offered to include language indicating that both paragraphs "include" the requirement that "unless the inspected. . ." This seemed acceptable to the delegations.

¶18. (U) In regards to the second paragraph, the Indian delegation requested that the reference to the Review Conference document and optimization efforts be deleted and the remainder of the paragraph dealing with the operational recommendations be moved to follow the treaty citations contained in the first paragraph. While delegations did not voice objections to the Indian proposal, consensus was not reached and the facilitators agreed to issue, by the end of the week, a revised text that indicated changes. During follow-on discussions with the UK, Germany, France, Japan and

Switzerland, it appeared that analysis of the proposal does not weaken the language and appears simply editorial in nature. Del will forward text for consideration, but agrees that, although irritating, the change does not appear to damage the thrust of the report language, which is to provide cover to the TS to establish criteria to reduce the number of facility agreements. Follow-on discussions with the TS (Runn) confirmed that the TS intends to proceed with the understanding as articulated during the discussions and in earlier TS papers, that criteria established will dramatically reduce the number of facility agreements pursued.

OCPF Site Selection

19. (U) OCPF Site Selection discussions began during the WEOG on June 16. The U.S. inquired about WEOG's current stance towards the Swiss-U.S. proposal. Only one delegation - Canada - voiced a strong preference for the proposal, in principle. Two other delegations, Germany and the UK, indicated they still do not have final comments on the proposal, but indicated they continue to support discussions on the subject. Other WEOG delegations did not take the floor. After the meeting, New Zealand privately reported that Wellington supports the proposal, as written.

20. (U) During the consultations, the facilitator (Wilke, Netherlands) indicated he would be stepping down as facilitator. Del understands the Dutch are pressing for his replacement to be Johan Verboom of the Dutch delegation, which Del supports. On substantive matters, very little progress was made. Delegations remain cautious about proposals to incorporate SP allocations in the selection methodology, despite the treaty requirement, and also remain concerned about the manner of transparency and accountability in the allocation of TS points under the proposal. However, China, Russia, India, South Africa, and Iran all indicated that the current methodology is not acceptable and expressed a desire to continue discussions on the proposed selection methodology. India reiterated its detailed suggestions on their continued concerns with the text: politicization of the process by incorporation of SP allocations, equitable geographic disposition and complexity of the proposal.

21. (U) Del (Sanders) offered a path forward that appears well received. The proposal is, essentially, to address each of the weighting factors individually, analyzing the pros and cons of various options presented thus far. In this manner, States Parties can objectively evaluate the rationale of the Swiss-U.S. proposal. Such an approach may facilitate leading SPs to the Swiss-U.S. methodology by analyzing "how we got here" rather than a "here's the math" approach. Such transparency may eliminate some of the suspicions about the proposal likely at the root of SP hesitation to adopt the proposal - - that the Swiss and U.S. are acting as wolves in sheep's clothing to target the NAM. One of the strengths of the proposal in alleviating this concern is the geographic disposition built on proportional number of plant sites within SPs and that the two countries presenting the methodology will, likely, see an increase in domestic inspections as a result of its adoption. As foreseen in the Convention, the balance comes from both the allocation of TS and SP points in this regard.

Declaration Handbook/Handbook on Chemicals

22. (U) During this round of discussions on the Handbook on Chemicals, the facilitator (Ruck, Germany) focused on finalizing EC-37 proposed report language designating a 100 g threshold for "marking" Schedule 1 chemicals in the Handbook on Chemicals. Having already reached consensus on marking Schedule 2 and 3 chemicals that have been declared to the TS by States Parties, the issue of Schedule 1 required further clarification. Currently, in the Handbook on Chemicals, there are several hundred Schedule 1 chemicals listed. The overwhelming majority of these chemicals have only been produced in laboratory settings for background data for the OPCW's analytical database. As such, they are neither produced, not consumed other than their one-time creation for data generation.

23. (U) To assist States Parties in sifting through the Handbook on Chemicals, it was agreed that "marking" those chemicals that have been declared, by States Parties, as having been produced, either as weapons or for non-prohibited purposes, would serve as a useful indicator to non-technical users of the Handbook. The marking system would consist of an asterisk under a column heading which would read "Declared Production above 100g Since Entry-Into-Force (EIF)". Del, UK, Japan, Russia, Switzerland all supported the facilitator's proposal and agreed that 100 g was the reasonable applicable quantity threshold, given the declaration triggers identified in paragraphs 11-12, Part VI

of the Verification Annex.

¶24. (U) Regarding updates to the draft Handbook currently under development, the facilitator indicated that the new version would include improvements in the electronic version and a searchable chemical database, which will include chemical structure-searching capabilities. It was also decided that the Handbook is a TS document and does not require formal approval of the EC for distribution. That said, it was agreed that any further improvements or discussions should continue in this forum, like the discussions on marking of chemicals, to ensure States Parties input is offered to the TS.

¶25. (U) Javits sends.
SOBEL